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SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

March 24, 2006

Stephen G. Thornhill
Project Manager, Environmental Studies and Permitting
Burns & McDonnell
9400 Ward Parkway
Kansas City, MO 64114-3319

Dear Mr. Thornhill:

I have received your letter of March 1, 2006, regarding the Federal Railroad Administration's (FRA) interest in hiring Burns & McDonnell to meet its obligations under Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303. FRA has asked you to review information set forth in the Board's completed Environmental Impact Statement (EIS) for the Powder River Basin Expansion Project¹ and then extract the information presented there that is relevant to FRA's Section 4(f) process. Section 4(f) does not apply to the Board. Therefore, although the Board's EIS sets forth information that is relevant to Section 4(f), the EIS itself did not contain a formal Section 4(f) analysis.

In your letter, you explain that Burns & McDonnell is uniquely qualified to accomplish this task for FRA because of its thorough knowledge of the Board's EIS, which Burns & McDonnell assisted the Board in preparing. You state that no additional analysis beyond that already contained in the completed EIS would be necessary or required. Furthermore, I understand that DM&E (the railroad applicant in the Powder River Basin Expansion Project) has no objections to Burns & McDonnell doing this work.

You ask whether the work that FRA would like Burns & McDonnell to do would violate the terms of the Memorandum of Understanding (MOU) that Burns & McDonnell signed in March 2004, along with the Board's Section of Environmental Analysis (SEA) and DM&E. The applicable language of the MOU set forth in Section III.E(1) provides that:

No employee of either the Contractor or any subcontractor, who works on the Project for SEA or Railroad ("Core Team Member"), shall engage in (a) other work for the Railroad during the [EIS] process, or (b) any work for any party other than SEA or Railroad relating to the Project or Application.

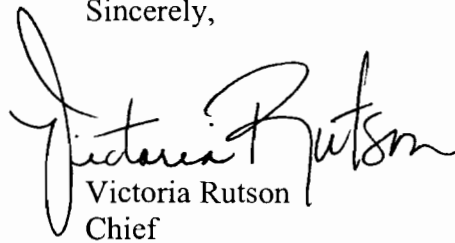
¹ STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin (STB served February 15, 2006).

The purpose of this provision is to ensure the integrity of the environmental analysis by preventing the contractor who assists the Board in preparing environmental documentation from working for another party involved or concerned with the same project.

The circumstances you have outlined could present a potential conflict of interest because Burns & McDonnell would be working for another party (FRA) on aspects of environmental review connected with the Powder River Basin Expansion Project. However, the anticipated work you would do for FRA would enable FRA to conclude its Section 4(f) analysis more expeditiously and efficiently than if Burns & McDonnell were not involved. Moreover, Burns & McDonnell's unique knowledge would accommodate our sister agency. Finally, the Board's environmental review of the Powder River Basin Expansion Project has been completed, the Board has already issued its final decision in this matter, and no additional analysis beyond that contained in the EIS would be necessary. For all of these reasons, allowing Burns & McDonnell to do the work discussed above would be in the interest of both FRA and the Board. Accordingly, I believe that it is appropriate for me to waive the provision of the MOU and allow you to conduct the work specified above for FRA.

If you have any questions or concerns, please feel free to contact me at (202) 565-1545.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Chief

cc: Federal Railroad Administration
DM&E Railroad Corporation